

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Corrie Silverberg and Charles Gotzian,

Complainants,

vs.

ORDER OF DISMISSAL

Laura Jones, Shane Berg and Ronald Dolly,

Respondents.

On June 6, 2013, Messrs. Silverberg and Gotzian filed complaints with the Office of Administrative Hearings alleging that Laura Jones, Shane Berg and Ronald Dolly violated Minn. Stat. § 211B.06. The Complaint asserts that the Respondents prepared and disseminated false campaign material in connection with Mr. Silverberg's re-election bid to the Orrock Township Board.¹

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on June 6, 2013, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by electronic mail and United States mail to the Respondents on June 6, 2013.

After reviewing the Complaint and attachments, the Administrative Law Judge concludes that the Complaint does not state a *prima facie* violation of Minn. Stat. § 211B.06. Based upon the Complaint, and for the reasons detailed below,

IT IS ORDERED THAT:

The Complaints filed by Corrie Silverberg and Charles Gotzian against Laura Jones, Shane Berg and Ronald Dolly are **DISMISSED**.

Dated: June 11, 2013

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

¹ Messrs. Silverberg and Gotzian, who had earlier served as Township Supervisors, were not re-elected in the March 12, 2013 balloting. Ms. Jones won re-election to the township board, and Messrs. Berg and Dolly were newly elected, on that date. See, Attachment to Complaint, Township Minutes at 3 (March 27, 2013).

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

Factual Background

The Complaints alleges that prior to the Orrock Township election on March 12, 2013, a flyer was circulated within the township that asserted that Messrs. Silverberg and Gotzian were “part of the Knothole Gang” – a local civic watchdog group. The flyer went on to assert that the Knothole Gang is “running Orrock Township” and that the group’s activity “is costing taxpayers hundreds of dollars a year.” The flyer concludes it is polemic by urging voters to cast ballots for Ms. Jones and Messrs. Dolly and Berg.²

The Complaint asserts that notwithstanding Messrs. Silverberg and Gotzian’s public denials that they are current members of the Knothole Gang, the flyer falsely claims that they are “part of the Knothole Gang.”

The flyer does not include any disclaimer or other claim of authorship.

The Complainants also allege that the reverse-side of the flyer included a sample township election ballot, which urged votes for Ms. Jones and Messrs. Dolly and Berg, and that Ms. Jones had used a similar sample ballot during her re-election campaign.³

During a Township Board meeting, Ms. Jones was questioned about her role in the development of the flyer. She denied having any role in developing the flyer.⁴

Analysis

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

[i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or

² Complaint, “Stop the Gang” Flyer.

³ See, Attachment to Complaint, Township Minutes at 2 (March 27, 2013).

⁴ *Id.*

defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

Thus, it is a violation of this section for a person to intentionally participate in the preparation, dissemination or broadcast of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false.

To allege a *prima facie* violation of this statute, the complainant must set forth sufficient facts to show that a violation of law has occurred.⁵

“*Prima facie*” means “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”⁶ “*Prima facie* evidence” is “[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.”⁷

In determining whether a campaign complaint sets forth a *prima facie* violation of the statute, the Administrative Law Judge is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible.

In this case, even if the claim that Silverberg and Gotzian are “part of the Knothole Gang” is false, there are still no facts that link Mr. Berg, Mr. Dolly or Ms. Jones to either production or distribution of the flyer. Particularly in the face of Ms. Jones’ public denial of any role in development of the literature, there must some fact that would “sustain a judgment” that the Respondents were involved in authoring or circulating the item.

To be sure, these candidates benefitted from the particular message in the flyer, but that alone does not establish authorship or purposeful dissemination of the offending literature. Indeed, it is not uncommon for persons who are not candidates to circulate messages in political campaigns.⁸

Because the Complainants have not asserted sufficient facts, that if accepted as true, would establish that the Respondents violated Minn. Stat. § 211B.06, the Complaint must be dismissed.

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⁵ See, Minn. Stat. § 211B.32, subd. 3.

⁶ *Black’s Law Dictionary* 1228 (8th ed. 2004).

⁷ *Id.* at 598.

⁸ Compare generally, Minn. Stat. § 10A.01, subd. 18 (“‘Independent expenditure’ means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate’s principal campaign committee or agent”).